

District Judge (Magistrates' Courts) 2010 Crime Qualifying Test

Feedback Report

January 2011

Purpose

The purpose of this report is to provide general feedback on candidate performance in the District Judge (Magistrates' Courts) 2010 Crime qualifying test. The first part of the Report describes how the Judicial Appointments Commission (JAC) developed the test and marking schedule, and how the test was structured. The second provides information on the overall performance of candidates in the test, identifying areas where they performed well and where they performed poorly. The third part gives more detailed comments in relation to each of the eight questions in the test.

Qualities and Abilities

The test was set to assess:

- Outstanding Intellectual Capacity – the ability quickly to absorb and analyse information
- Authority and Communication Skills – the ability to explain procedure and any decisions reached clearly and succinctly to all those involved

Development of the test

The test and marking schedule were written by a serving District Judge nominated for the purpose by the Senior District Judge (SDJ). The draftsman judge has extensive experience in the Magistrates' Courts. A second serving District Judge, who took the lead on drafting the Family test used in this selection exercise, reviewed and provided comment on early drafts of the test. The JAC Advisory Group, which includes senior judiciary and representatives of the legal profession, offered advice and guidance during its development. In common with all qualifying tests used by the JAC, both test and marking schedule were subject to an extensive quality and equality assurance process. The effectiveness of the test was assessed by means of two dry runs with a range of volunteer lawyers and judges.

Preparation material

The JAC notified candidates three weeks in advance that the test would present a single scenario based on a domestic violence case. Candidates were told which statute, practice directions and case law would form the basis of the test and were

provided with copies of most of these materials to facilitate their preparation. They were invited to prepare for the test by familiarising themselves with these materials. Candidates were also told that they would not be allowed to bring in copies of these materials or any other materials during the sitting of the test.

The materials included five sections from the Criminal Justice Act 2003; four parts of the Criminal Procedure Rules; a reduced summary of Judicial Studies Board material prepared for DJ continuation courses. Candidates were also referred to the Magistrates' Courts Sentencing Guidelines.

Candidates had 90 minutes to complete the test.

Marking schedule

The marking schedule provided suggested answers and marks for each question, providing for a total of 80 marks. It allowed for all answers that demonstrated the qualities of outstanding intellectual capacity and authority and communication skills to be rewarded. A further eight discretionary marks were available to the markers to award for good points raised by candidates not anticipated by the schedule.

Marking of the test

The Deputy SDJ nominated eight currently serving members of the judiciary to mark the test. Each judge-marker had extensive experience in the Magistrates' Courts.

JAC staff provided a full briefing to the markers at the outset of the marking exercise.

In order to facilitate consistency of approach, the markers marked by question rather than by test script. Decisions on the interpretation of the marking schedule and use of discretionary marks were taken only after full discussion with other markers. Such decisions were recorded and formed a precedent for the marking of subsequent scripts. All scripts were marked anonymously.

Moderation

Markers were invited to identify and put forward for moderation any scripts which they felt that a strict application of the marking schedule either over- or under-rewarded. Once marking was complete, a twenty per cent sample of the scripts was selected for moderation. Those selected included the small number of scripts identified as candidates for moderation by markers; samples of the high, low and mid scoring scripts; all scripts close to the prospective cut-off point for invitation to selection days; and a further random sample. Moderation took the form of markers cross checking and re-marking each other's work.

The moderation concluded that the original marking had been consistent and fair.

It is JAC policy for a Director and the Judicial Appointments Commissioner assigned to the selection exercise to undertake separate quality assurance checks. Their independent conclusions were that marking had been robust and consistent.

Distribution of marks

The highest mark awarded was 74 out of a possible 88 and the lowest 10. There were relatively few candidates who achieved a mark greater than 65 and few who scored no more than 20. In between 21 and 64, there was a broadly even distribution

of marks.

General comments on candidate performance

Approach taken by markers

It was agreed between the markers that minor inaccuracies in, for example, section numbers of relevant legislation or names of relevant cases would be overlooked entirely or would be awarded half marks, depending on the extent of the inaccuracy.

Where questions called for a specific decision, marks were awarded where the answers showed logical thought and application of the relevant legislation regardless of the decision eventually reached unless, of course, the decision was wrong in law.

The markers used the eight discretionary marks very sparingly. The marking schedule provided was very comprehensive and there was little scope for extra marks to be awarded.

At the outset it was identified that the test paper contained an error in that the charge of common assault was said to be contrary to section 39 Offences against the Person Act whereas it should have been said to be contrary to section 39 Criminal Justice Act 1988. This mistake had been identified during the first sitting of the test. Candidates in subsequent sittings of the test were informed of the error. Later candidates, however, were notified at the outset. Only two candidates made reference to the error in their test scripts. The markers were satisfied that no candidate was disadvantaged by the mistake.

The markers were unanimous in their view that the case scenario and the questions posed were ones that would come up in Court on a very frequent basis.

Overall standard of the scripts

The scripts were of very variable quality. A small number were very poor, particularly given the assistance provided in the preparation material. At the other end of the scale the high scoring scripts demonstrated a good grasp and analysis of the material provided and an ability to explain reasoning and decisions clearly.

Areas where candidates could have attracted more marks

Pressure of time

It was clear that the majority of candidates were able to complete all the questions in the time provided. However, there was a significant minority who had had to rush the last question, which was the one carrying most marks. A much smaller minority failed completely to answer one or more questions but these candidates generally failed to attain good scores for the questions they had completed.

The markers were agreed that the test had presented candidates with a pressure of time that was an accurate reflection of the pressure of time that a District Judge (Magistrates' Courts) would be likely to face. In short, the time allowed for the test paper was about right and, if anything, a little on the generous side.

Content

It was clear that a significant number of candidates lost marks because they ignored the instructions given in the Candidate Brief on the first page of the test paper. Common issues included candidates wasting time by reciting the facts or by “blanket” reciting of statutory provisions – for example the bad character and hearsay provisions in the Criminal Justice Act 2003 – rather than applying the relevant part to the facts of the case.

In addition many candidates failed to answer the question on the basis of the details they had, instead stating that they would adjourn the case for further information. Several of the questions called for a decision to be made, for example whether bail could be refused or whether a witness summons should be issued. Those candidates who merely recited the opposing arguments or considerations without reaching a definite “Yes” or “No” decision achieved fewer marks than those who came to a conclusion.

The marking scheme provided for a preferred answer but marks were also awarded for an alternative answer provided it was well reasoned and not wrong in law.

Candidates’ approach to providing answers

Some candidates could have attained higher scores had they taken a more considered approach to providing answers. Issues included failure to prioritise questions according to the number of marks they attracted; failure to read the question and ensure it was fully understood and all the points to be answered taken account of; failure to answer “Yes” or “No” when the question clearly called for it; and providing irrelevant detail rather than concentrating on specific points raised by the questions.

Illegible handwriting

The markers were told that candidates were advised by the test invigilators before starting the test that markers would not be able to award marks to answers they could not read. Despite this advice, a few candidates provided manuscript answers that were only partly or barely legible.

Question by question comment

Question 1

This question asked candidates whether bail could be refused for the reasons advanced by the CPS in the scenario, and to list the grounds on which it might be legally possible to refuse bail on the facts of the case. The question required candidates to identify that common assault is a summary only imprisonable offence and that the Court's power to refuse bail has been circumscribed by Schedule 12 CJA 2008. Failure to recognise that or to itemise the only grounds on which bail could be refused led to very few marks being awarded although some were available for more general awareness of bail provisions.

Question 2

This question asked whether the candidate would grant an adjournment and to justify their decision; and what next steps they would take at the hearing. This called for a clear decision on the application to adjourn, noting the relevant Criminal Procedure Rule and Essential Case Management guidance from the Senior Presiding Judge, together with a good understanding of case management.

Common faults included candidates "reminding" themselves of the need to avoid adjournments without actually making a decision as to whether or not to adjourn, and a failure to refer to the relevant Rule and/or the guidance from the SPJ as giving them authority to insist on a plea being taken.

Question 3

This question asked whether the previous convictions of the defendant were potentially admissible at trial and why, referring to the Criminal Justice Act 2003, CPR and any case law provided in the preparatory material. The focus was on the admissibility with particular reference to an attack on the character of a witness and the relevance to a matter in issue between prosecution and defence.

Good candidates dealt fully with both these aspects, as well as recognising that an attack on character can be made during interview and is not limited to evidence at trial. However, a surprising number of candidates completely missed this point and concentrated on "propensity", often failing to identify the "relevant to a matter in issue" point.

Some candidates simply itemised the whole of Section 101(1) of the CJA 2003 but received no marks for that unless they applied the relevant parts of the section to the facts.

Question 4

This question asked whether candidates would issue a witness summons forthwith, in circumstances where the defence were seeking to compel production of medical records of the complainant, and what the procedure was for issue of a summons.

Good candidates were able to identify that a summons could not be issued forthwith and to spell out the procedure for written notice, giving 14 days to object together with requirements which then have to be satisfied before a summons could be issued.

A significant number of candidates, however, were clearly unaware of the requirements of the Rules or were very vague about those requirements, despite the fact that the relevant Rule was included in the preparation material, and accordingly received few marks.

Question 5

This question asked what order candidates would make in the case that the defendant had dispensed with his lawyer and wished to cross-examine his wife - the complainant - in person. It asked what the candidate would explain to the candidate about the order. It required candidates to confirm that the Youth Justice and Criminal Evidence Act 1999 was authority for an order preventing the defendant from cross-examining his wife, that the effect of the order has to be explained to the defendant and that if he does not arrange for a solicitor to conduct the cross-examination the Court will appoint one for that purpose.

The majority of candidates gave satisfactory answers. This question was one in which it was easy to score maximum marks.

Question 6

This question asked candidates to state the legal position in the case that the defence lawyer objected to the complainant refreshing her memory without first giving evidence from memory. It asked candidates to refer to CPR, CJA 2003 and case law supplied in the preparatory materials.

Most candidates referred to section 139 CJA 2003 as relevant, although few specified the relevant Rule and very few identified the point that not only must the Court be satisfied that the statement was made when her recollection of events was likely to have been significantly better than at the date of trial (and many candidates lost a mark by omitting the word "significantly") but also the witness must confirm that the statement records her recollection at the time when it was made.

Those matters apart, most candidates gave satisfactory answers.

Question 7

This question required candidates to consider the hearsay provisions in the CJA 2003 where the prosecution wish to adduce the statement of a witness who does not attend through fear.

This was another question where some candidates set out the provisions of section 116(2) and section 114 but without applying them to the facts. Good candidates were aware of the need to call evidence as to the fear, that fear is to be construed widely, and the matters to be taken into account when considering the interests of justice test. Less successful candidates missed some or all of these points.

Question 8

This question carried most marks and it was surprising that very few candidates took the question out of sequence to make sure they gave themselves sufficient time to complete it. The question called for a decision, and explanation, as to whether the case passed the custody threshold and for candidates to identify, in sequence, the five step process of a sentencing decision.

Good candidates identified that the threshold was passed because there were two or more factors indicating higher culpability. Weaker candidates either said that the threshold was not passed or that it was but gave vague reasons as to why.

So far as the process was concerned, good candidates were aware of the steps outlined in the Magistrates' Courts Sentencing Guidelines and applied them to the facts; less successful candidates were not aware of the process or did not apply it to the facts.